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July 8, 2011

Honorable Roanne L. Mann
United States Magistrate Judge
Eastern District of New York
225 Cadman Plaza East
Brooklyn, NY 11201

Re: Ross University School of Medicine v. Brooklyn-Queens Health Care Inc.
and Wyckoff Heights Medical Center, No. 09 Civ. 1410 (KAM) (RLM)

Dear Judge Mann:

This letter is respectfully submitted in response to the application set forth in the plaintiff's letter to the Court dated July 5, 2011.

The Rule 30(b)(6) deposition notice attached as Exhibit A to Mr. Tzanetopoulos' letter of July 5, 2011, is the third in a series of such notices served on defendants. The current version is a document demand masquerading as a deposition notice. Instead of describing the "matters for examination" with "reasonable particularity," as the Rule requires, the notice seeks "[a]ll information," "[a]ll evidence," and "documentation" relating to extremely broad subject matter areas over a five-year period.

When I first reviewed the notice, I made these points to plaintiff's counsel, who disagreed with me. I also indicated that, since the plaintiff was taking the depositions of the defendants' Chief Executive Officer, Chairman of its Board of Trustees, General Counsel, former Chief Financial Officer and former Chief Operating Officer, and director of its Medical Education Program, it was likely that he would obtain testimony on each of the noticed items during the depositions of those witnesses. I further suggested that if it turned out, at the conclusion of the depositions, that Mr. Tzanetopoulos believed, in good faith, that additional testimony was needed on one or more of the noticed topics, we could discuss taking additional testimony beyond the fact discovery cut-off. Mr. Tzanetopoulos' response was that an "up front" commitment that a witness would be produced "if I think matters still require testimony" was necessary. In response, defendants designated Mr. Garg, Wyckoff's CEO and a member of its Board of Trustees, as its 30(b)(6) representative. (This e-mail exchange is annexed to this letter as Exhibit A.) Mr. Garg's deposition was on June 24, 2011, two weeks ago.

Although there are ten items listed in the 30(b)(6) notice, plaintiff's grievances are limited to three issues, a fact which itself suggests the designated witness's testimony was substantially adequate. Moreover, as Exhibit D to plaintiff's letter indicates, the three issues

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which have been brought to the Court's attention have been addressed in discussions between counsel in an attempt to resolve them.

The Trustees and Officers Issue (Topic No. 10)

When this topic came up during Mr. Garg's testimony, I placed on the record that defendants had already produced documents, including board minutes and various lists for all three entities which identify the trustees and officers from 2006 forward. (*See, e.g.*, documents annexed as Exhibit B.) Mr. Tzanetopoulos insisted that he wanted sworn testimony on this information for all three entities -- BQHC, Caritas, and Wyckoff -- for a five-year period. (Tr. 17). When I objected that this would essentially put the witness to a memory test, Mr. Tzanetopoulos suggested that I should prepare an outline of the information and have the witness read it into the record, a practice with which I am unfamiliar. (Tr. 18).

In any event, defendants provided plaintiff with a list of the trustees of Wyckoff and their dates of service, in addition to those previously supplied, during Mr. Garg's deposition. I advised Mr. Tzanetopoulos on June 30 that defendants intended to provide similar lists for Caritas and BQHC if that would satisfy him. This would, of course, duplicate the information already contained in many of the documents that have been produced and which have been used by plaintiff's counsel in numerous depositions. There is no need for a witness to have these lists in front of him to read the information into the record of a deposition transcript.

Identification of BQHC Contracts Between 2006 and the Present (Topic No. 8)

Similarly, the contracts that BQHC is or has been a party to were produced in discovery, and, as Exhibit C indicates, on June 30 I advised Mr. Tzanetopoulos that defendants would provide a list of such contracts and that this was more sensible than having a witness read that information at a deposition.

Information and Documentation Concerning Loans, Transfers of Assets, and Transfers of Employees Between BQHC, Wyckoff, Caritas, and/or the Hospitals from 2006 to the Present (Topic No. 7)

As I indicated to Mr. Tzanetopoulos on June 30, this is an overbroad request for documents and testimony, across a wide range of subject matters, for a five-year period. It is difficult to imagine how any person could be prepared for and give sworn testimony on these subject matters from 2006 to the present. There are numerous documents which have been produced in discovery that touch on these subjects and which have been used by plaintiff's counsel as deposition exhibits. As plaintiff well knows, because it has been testified to over and over again in deposition testimony, Caritas only operated from 2007-2009. During half of that period, from the Fall of 2007 to the Fall of 2008, the hospitals and BQHC, which was the passive corporate parent of the hospitals, were under the effective control of a purported turn-around specialist imposed by the Department of Health. The sole relevant allegation in the Complaint is

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that “Wyckoff controlled and controls BQHC.” (Second Am. Compl. ¶ 78). In light of this allegation, the undisputed facts, and the discovery already produced by defendants-- which amounts to approximately 60,000 pages of documents -- this aspect of the deposition notice is unreasonable and not a proper use of the discovery procedure set out in Rule 30(b)(6).

For the foregoing reasons, plaintiff’s application should be denied.

Finally, with respect to this Court’s order that defendants show cause why plaintiff’s letter and attachments other than the deposition transcript should not be publicly filed, defendants state that they do not oppose the public filing of those materials.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Walter P. Loughlin", followed by the initials "JHR" in a smaller, slanted script.

Walter P. Loughlin

Attachments

cc: George J. Tzanetopoulos, Esq.

Exhibit A

Loughlin, Walter P.

From: Loughlin, Walter P.
Sent: Thursday, May 26, 2011 8:05 AM
To: 'Tzanetopoulos, George J.'
Subject: RE: Rajiv Garg Deposition

Let's do it this way for now. I will designate Rajiv Garg as the 30b6 witness on the subjects you designated.

From: Tzanetopoulos, George J. [mailto:gtzanetopoulos@bakerlaw.com]
Sent: Wednesday, May 25, 2011 7:34 PM
To: Loughlin, Walter P.
Subject: RE: Rajiv Garg Deposition

I would be inclined to do that, except that I'll need an up front commitment that defendants will indeed produce someone on the topics during the week of the 13th if I think that matters still require testimony. I can't sign off on an agreement just to discuss the matter down the road.

From: Loughlin, Walter P. [mailto:Walter.Loughlin@klgates.com]
Sent: Wednesday, May 25, 2011 6:30 PM
To: Tzanetopoulos, George J.
Subject: RE: Rajiv Garg Deposition

On the 30b6, I suggest that we see if you can obtain the testimony on the subjects in the 30b6 from the folks on our side you are deposing. If at the end of the day you think you need someone else, we discuss agreeing to take some additional testimony the week of the 13th unless we are both in a state of collapse.

Exhibit B

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BQHC 00488

Exhibit C

Loughlin, Walter P.

From: Loughlin, Walter P.
Sent: Thursday, June 30, 2011 9:02 AM
To: 'Tzanetopoulos, George J.'
Cc: 'Hoffman, David'
Subject: RE: Ross v. BQHC
George:

1. Mr. Rucigay is available to resume his deposition on July 5 at 10 AM at Wyckoff.
2. It is our intention to provide lists of the board members and dates of service for BQHC and Caritas similar to what was provided to you on Wyckoff.
3. We are working on that. I believe it makes more sense to provide a list of contracts rather than the testimony of the witness.
4. This is so broad that I find it difficult to imagine any witness who could be prepared to testify under oath as to the topics you have identified. I note that you are also seeking documents. You have many documents which have already been provided, and used by you as exhibits at depositions.

From: Tzanetopoulos, George J. [mailto:gtzanetopoulos@bakerlaw.com]
Sent: Wednesday, June 29, 2011 2:04 PM
To: Loughlin, Walter P.
Subject: Ross v. BQHC

Pat:

I left a voice mail message for you yesterday and have not heard back from you about the following:

- (1) Emil Rucigay was unable to complete his deposition. Please provide a date on which Mr. Rucigay will be available to complete the deposition.
- (2) Defendants designated Rajiv Garg as their deponent in response to plaintiff's Rule 30(b)(6) deposition notice. Mr. Garg was completely unprepared to answer questions regarding nearly all of the topics. Please provide a date on which defendants will produce a properly prepared witness for the following previously noticed topics:
 - (a) The identity and dates of service of the officers and trustees of BQHC, Wyckoff, and Caritas, and if salaries or board fees were paid to such officers or trustees, the identity of the entity that paid them. (*N.b.*, defendants did provide during Mr. Garg's deposition a list of Wyckoff trustees and dates of service, but Mr. Garg was not prepared to answer questions with respect to the other entities' trustees nor any of the entities' corporate officers) (Rule 30(b)(6) notice topic no. 10);
 - (b) Identification of all contracts into which BQHC entered as a party between 2006 and the present (.Rule 30(b)(6) notice topic no. 8); and
 - (c) All information in Defendants' possession concerning loans, transfers of assets, transfers of employees between any of BQHC, Wyckoff, Caritas and/or the Hospitals between 2006 and

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the present, and the documentation concerning such transfers (Rule 30(b)(6) notice topic no. 7).

Best regards,
George Tzanetopoulos

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